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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 29.08.2023

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W.P.(C) 11728/2019**PRHARI SAHYOG ASSOCIATION**

..... Petitioner

Through: Mr. Gaurav Kumar Bansal and Mr. Vishnu Kumar Gupta, Advocates.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC for Respondent No.1/ UOI.
Mr. Santosh Tripathi, Standing Counsel with Mr. Arun Panwar and Mr. Pradyumn Rao, Advocates for Respondent/ GNCTD.**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****SATISH CHANDRA SHARMA, CJ. (ORAL)**

1. The present petition has been filed under Article 226 of the Constitution of India as a Public Interest Litigation by the Petitioner which is a Non-Governmental Organization ("NGO") registered under Section 8 of the Companies Act, 2013. The aim and objective of the NGO as stated in the writ petition is to fight for the upliftment of fundamental and civil rights of Persons with Disabilities.



2. The Petitioner in the writ petition has stated before this Court that on 26.10.2019, the Respondent No.3, the Department of Social Welfare, Government of NCT of Delhi (“GNCTD”) has published a full page advertisement titled as “Women Separated From Their Families” in a English National Daily, and in that particular advertisement not only the photographs of the women have been published, the “Intelligence Quotient (IQ) Score” of women with Disability institutionalized in Asha Kiran, Center Delhi also finds place. The Petitioner contends that it is an unfortunate and unwarranted action on part of the Respondent No. 3 and disclosing the identity of the women has led to their dignity and respect being compromised.

3. The Petitioner’s contention is that the publishing of IQ as well as the photographs of 59 Women with disability institutionalized in Asha Kiran Centre should not have been published and the act of the Respondents is in complete violation of the statutory provisions as contained under the Right to Persons with Disability Act, 2016 (hereinafter to be referred to as “**RPWD Act**”).

4. The Petitioner has also stated that the publication of photographs with the IQ scores is in complete violation of the United Nations Convention for Right to Persons with Disability (“**UNCRPD**”) and the Petitioner has prayed for the following reliefs in the instant writ petition:

“A. Issue a Writ / Order / Direction in the nature of mandamus to direct to direct Respondent No. 03 to compensate all those women with disabilities institutionalized in Asha Kiran, whose identity they have revealed unlawfully by way of releasing their



"IQ SCORE" and "PHOTOGRAPHS" in a National English Daily On 26/10/2019.

B. Issue a Writ / Order / Direction in the nature of mandamus to direct Respondent No. 03 to take action against those Public officers who have violated the provisions of RPWD ACT - 2016 by way of releasing the IDENTITY of Women with Disabilities in Public.

C. Issue Writ / Order / Direction in the nature of mandamus against Respondent No. 02 to conduct orientation workshops on RIGHT OF PERSONS WITH DISABILITIES ACT-2016 for Department of Social Welfare, Govt of Nct of Delhi.

D. Issue a Writ / Order / Direction in the nature of mandamus to direct Respondent No. 01 and Respondent No. 03 to formulate, design and implement SOCIAL SECURITY SCHEME as per Section 24 of RPWD ACT- 2016 for Persons with Disabilities institutionalized in places like ASHA KIRAN.

E. Issue a Writ / Order / Direction in the nature of mandamus to direct Respondent No. 01 to issue Order to protect the privacy of such person so that in future such incident should not get repeated.

F. Issue a Writ / Order / Direction in the nature of mandamus to direct Respondent No. 01 to issue GUIDELINES for tracing families of such persons with disabilities who are living in places like ASHA KIRAN.

G. Pass any other Order or Direction which this Hon'ble Court may deems fit and proper under the facts and circumstances as mentioned above."

5. A short affidavit has been filed by the Respondent No.1 i.e., Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India and it has been stated in the reply that the issue in the present Petition pertains to allegation of irregularities committed by Asha Kiran Centre, a rehabilitation home run



by the Department of Social Welfare, GNCTD. They submit that the Department of Social Welfare, GNCTD/Respondent No.3 has filed a detailed reply justifying their stand in the matter.

6. The Respondent No. 3 has also filed a reply wherein has admitted that an article was published by Respondent No. 3 on 26.10.2019 in various Hindi and English Daily Newspapers, including in the *Hindustan Times*, under the title '*Women Separated from Their Families*'. The Respondent No.3 has stated that the advertisement was published in respect of 59 female residents of Asha Kiran Complex along with their IQ scores and other identifying information only with an aim and objective of tracing the families of the said female residents and there was no *mala fide* intention of Respondent No.3. The advertisement was published keeping in mind the best interests of the said female residents of Asha Kiran, which is to rehabilitate/restore them to their families.

7. The Respondent No.3 has further stated that there has been no violation of the statutory provisions as contained under the RPWD Act. It has been further stated that the Respondents have not violated Section 3 or Section 4 of the RPWD Act. On the contrary, it is stated that its actions were an effort to ensure that the resident women of Asha Kiran are united with their families.

8. The Respondents have further stated that there has been no violation of the Articles 22 and 31 of UNCPRD. The Respondents have further stated that rights under the international convention have to be balanced against the larger interest of rehabilitation enjoyed by Persons with Disability under the RPWD Act.



9. The Respondents have stated that they have not violated any fundamental right of the persons whose photographs have been published in the National Newspaper on 26.10.2019, and the main objective was to trace the families of the women who are with them since long.

10. The Respondents have stated that they have taken all steps in respect of implementation of Schemes for Social Security keeping in view Section 24 of the RPWD Act by hosting various vocational training programs. They state that vocational trainings are being provided to the residents of Asha Kiran Complex in 10 different vocations.

11. It has also been stated that Respondent No.3 has established Halfway/ Longstay Homes for rehabilitation of Persons with Treated Mental Illness discharged from Government Hospitals, whose families have not been traced or who have been abandoned by their families. The said homes are namely Nav Kiran-I and Nav Kiran-II for women at Sector 03, Rohini and Nav Chetna for men At Sector – 22, Rohini. The Respondents have further stated a scheme is also being implemented to provide financial assistance of Rs. 2,500/- per month to persons with special needs to eligible persons with benchmark disabilities.

12. The Respondents have also stated that in an attempt to provide livelihood opportunities, a new initiative has also been taken by the respondents in collaboration with National Skill Development Corporation (“NSDC”). It is stated that under the scheme and a large number of such persons have been provided training in hospitality with Lemon Tree Hotels, including seven persons from Asha Kiran Complex, in an attempt to rehabilitate such persons.



13. The Respondents have also stated that they are in strict compliance of the statutory provisions as contained under the Juvenile Justice (Care and Protection of Children) Act, 2015 read with Juvenile Justice (Care and Protection of Children) Model Rules, 2016, and the judgment delivered by the Hon'ble Supreme Court in ***Bachpan Bachao Andolan v. Union of India***, (2014) 16 SCC 616. It has been stated that the aforesaid judgment of the Hon'ble Supreme Court permits the state authorities to publish photographs enabling the parents/ families/ relatives of the subject to locate them.

14. The Respondents have further stated that in furtherance of ***Bachpan Bachao*** (supra), the Ministry and Women & Child Development, Government of India have formulated Standard Operating Procedure (SOP) in case of missing children and the said SOP is also on record. The Respondent No. 3 has further stated that in case of missing children, their information is published in leading newspaper/television/electronic media as well as on social media, and that attempts are being made by them to unite such persons with their families, and at no point of time there was any intention on their part to harass or humiliate the residents of Asha Kiran Complex as alleged by the Petitioner nor there was any intention to breach any provision of law. Therefore, a prayer has been made on behalf of the Respondents for dismissal of the writ petition.

15. This Court has heard Learned Counsel for the Parties at length and perused the record.

16. The facts of the case reveal that the Petitioner NGO has stated in the Writ Petition that they are involved in upliftment of fundamental rights and



civil rights of Persons with Disability and came up before this Court on account of paper publication in National Newspaper on 26.10.2019. The News Paper advertisement which is published in English and Hindi Dailies on 26.10.2019 relates to photographs of 59 persons residing in the government shelter home which is under the control of State Government.

17. It is certainly true that the Advertisement includes photographs & details of persons with disability and the Petitioner is alleging violation of Section 3 and 4 of the RPWD Act as well as violation of Article 22 and 31 of UNCRPD by the Respondents. The aforesaid relevant statutory provisions i.e., Section 3 and 4 of the RPWD Act read as under:

“3. Equality and non-discrimination. —

(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

(2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment.

(3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim.

(4) No person shall be deprived of his or her personal liberty only on the ground of disability.

(5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

4. Women and children with disabilities. —



(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

(2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.”

18. Articles 22 and 31 of the UNCRPD reads as follows:

Article 22

Respect for privacy

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

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Article 31

Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:



a. Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

b. Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others."

19. The reply filed by the GNCTD reveals that publication of photographs of women residents of Asha Kiran Complex became necessary as the Government was trying to make all possible attempts to unite the Persons with Disabilities with their families and the advertisement was not published with an intention to violate their privacy but rather to search their family with the motive of rehabilitation. The action of the Government was certainly in good faith with honest intention and there was no intention at any point of time to violate any statutory provisions or to violate the articles of UNCRPD.

20. The short-affidavit filed by the Respondents further reveals, keeping in view Section 24 of the RPWD Act, various vocational programmes are being conducted by the Government. The Respondents of Asha Kiran complex have made the country proud by winning medals at the Special



Olympics and the GNCTD has at all times, taken interest in and acted in furtherance of the welfare of the resident women.

21. The documents on record establishes that the Office of the State Commissioner for Persons with Disabilities and the Union Territory Civil Services, Government of NCT of Delhi are conducting orientation training for implementation of the RPWD Act, 2016 to the various Government functionaries including those of the Department of Social Welfare, GNCTD and the object of such training is to make the Government employees more aware about the statutory provisions under the RPWD Act.

22. It is again an established fact that the Department of Social Welfare, GNCTD, keeping in view Section 24 of the RPWD Act is implementing various welfare schemes. The Department is providing for the upkeep, protection & shelter of persons with intellectual disabilities including Children with Intellectual Disability who have no family or have been abandoned or are without shelter. They are being kept and taken care of in Asha Kiran, Asha Jyoti and Asha Deep Complexes. The residents are being provided adequate food, medical services, special education as well as recreational facilities at these complexes.

23. The Respondents have further stated that they are imparting vocational training to the residents of Asha Kiran Complex in 10 different vocations, which are as follows:

“1. Cutting & Tailoring; 2. Block Printing; 3. Organic Colours through Temple Flowers; 4. Bag Making; 5. Art & Craft; 6. Drawing & Painting; 7. Clay Modelling; 8. Candle Making; 9. Artificial Jewellery Making; 10. Pottery”



24. The Respondents have further stated that on account of the sincere efforts of the Government, residents of the Asha Kiran Complex and Asha Jyoti Complex have won medals at the World Summer Games at Los Angeles, USA, World Winter Games and many other international events and at no point of time there was any intention to violate any statutory provisions of law.

25. The short-affidavit also establishes that Halfway/Longstay homes for rehabilitation of Persons with Treated Mental Illness discharged from Government hospitals are also being maintained by the Government, known as Nav Kiran-I and Nav Kiran-II for women at Sector 03, Rohini and Nav Chetna for men at Sector-22, Rohini. The short-affidavit also reveals that financial assistance is also being paid to the persons under the schemes of the Government.

26. The Respondents have also followed the statutory provisions as contained under Rule 69G of the Juvenile Justice (Care and Protection of Children) Model Rules 2016 which reads as under:

*“69G. Procedure to be adopted after the child is received–
 (1) The following procedure shall be adopted on the same day or the next day if the child is received in the night:
 (i) Photograph of the child shall be taken. One photograph shall be kept in the case file of the child and another shall be fixed on the index card with the particulars of the child. A copy shall be kept in an album serially numbered and a copy of the photograph shall be sent to the Board or the Committee as well as to the District Child Protection Unit and be uploaded on the designated portal set up for the purpose.
 (ii) the child may have a bath and be provided fresh clothes. The caregiver shall issue the child toiletry items, new sets of clothes, bedding and other outfit and equipment as per Rule 30*



of these rules, a list of which shall be kept in his case file. The provisions will be replenished from time to time as per Rule 30 of these rules;

(iii) the Child Welfare Officer or Case Worker shall familiarize every newly admitted child with the Child Care Institution and its functioning, particularly, in the following areas; –

- (a) personal health, hygiene and sanitation;*
- (b) discipline of the Child Care Institution and code of behavior;*
- (c) daily routine activities and peer interaction; and*
- (d) rights, responsibilities and obligations within the Child Care Institution.*

(iv) the child shall be examined by the medical officer, who shall record the state of health of the child, and of any wound or mark on his person and any other observations which the medical officer thinks fit and a copy of which shall be placed in the medical record of the child;

(v) a Child Welfare Officer or Case Worker shall be assigned to the child by the Person-in-charge.”

27. The Respondents have stated that they are following the statutory provisions as contained under the Juvenile Justice (Care and Protection of Children) Act, 2015 read with the rules framed thereunder as well as the guidelines framed by the Hon'ble Supreme Court in the case of ***Bachpan Bachao Andolan (Supra)***. The Respondent No. 3 has also filed a SOP issued by the Ministry of Woman and Child Development, Government of India in case of missing children and the same is being adhered to by the Respondents.

28. In view of the aforesaid statutory provisions, guidelines, and SOPs, wide publicity is given in case of missing children in leading newspaper, print/ electronic media and all sincere efforts are being made by the Respondents to ensure that the child or other persons who are residents of



Asha Kiran Complex and other shelter homes are united with their families and in case they are not united with their families they remain in the centers and are being provided all amenities by the Government.

29. The Respondents have stated that at no point of time, there was any intention to violate any statutory provisions of law and the photographs along with details including IQ scores were published. In the short affidavit, the Respondents have categorically stated that they have taken a policy decision not to publish IQ score which was done earlier, and the subsequent advertisement published in Times of India on 08.11.2019 has been placed on record. The same does not include IQ Score and it has been categorically stated on affidavit that the practice of reflecting IQ Score has been discontinued.

30. Keeping in view the aforesaid, this Court is of the considered opinion that the Respondents having discontinued the practice of publishing IQ scores of Persons with Disabilities, no further orders are required to be passed in the present Writ Petition.

31. However, the Respondents are directed to ensure that the statutory provisions as contained under the RPWD Act and UNCPRD to which India is also a signatory are not violated in future.

32. The Respondents shall also ensure that the residents of Asha Kiran Complex and other similar centers which are under the control of GNCTD are provided all kind of amenities to ensure that they live a meaningful life and are not deprived of their constitutional right guaranteed under the Constitution of India.



33. The Respondents shall also ensure that the Persons with Disability who are residing in the Center are given vocational training as has been done in the past and shall also through their good offices ensure that they are rehabilitated and not only this, the persons who have shown their skills in sports should also be imparted special coaching as they have proved their worth in international competitions held across the globe.

34. With the aforesaid, the present PIL stands disposed of.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

AUGUST 29, 2023

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